

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.23112 of 2017
and Cr1.M.P.No.13453 of 2017

- 1.Anisa Basheer Khan
- 2.M.Ramachandran
- 3.N.Veerapan
- 4.S.Rajkumar

...Petitioners

Vs.

1. The State rep. by
The Station House Officer,
Kalapet Police Station,
Puducherry.
Crime No.105 of 2017.

2. A.Balasubramanian

3. The Pondicherry University,
rep. By its Registrar, Kalapet,
Puducherry.

...Respondents

(R3 impleaded as per the order of this Court
dated 01.11.2017 made in Cr1.M.P.No.13453 of 2017)

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the case in Crime No.105 of 2017 on the file of the first respondent police, quash the same.

For Petitioners : Mr.N.R.Elango, Senior Counsel
for M/s.M.Govindaraju

For R1 : Mr.V.Balamurugane,
Additional Public Prosecutor

For R2 : Mr.M.Velumurugan

For R3 : Mr.Stalin Abhimanyu

O R D E R

The present Criminal Original Petition has been filed to call for the records relating to the case in Crime No.105 of 2017 on the file of the first respondent police, quash the same.

2.The learned Senior counsel Mr.N.R.Elango submitted that the first respondent registered a false case as against the petitioners in Crime No.105 of 2017 for the offences under Sections 120(B), 201, 381, 420, 468, 471 of IPC r/w 34 of IPC. The first petitioner is the Vice Chancellor incharge of Pondicherry University. The second petitioner is Professor in Economics at Pondicherry University. The third petitioner is the Data Entry Operator at Pondicherry University and the fourth petitioner is the Private Secretary to Vice Chancellor at Pondicherry University. The allegations against the petitioners are that they had prepared an ante dated order on 27.02.2016, as if it was prepared on 26.02.2016, which had facilitated the first petitioner to continue as the Vice Chancellor incharge of Pondicherry University. The second respondent / de-facto complainant was serving in the Pondicherry University during February 2016 and after one year, the present complaint has been lodged that too after some administrative action was taken to rectify his salary. Therefore, the complaint has been lodged with ulterior motive of the complainant. The subject matter in the complaint is about an order dated 26.02.2016 regarding removal of one Dr.J.Sampath, as Registrar incharge and appointment of de-facto complainant in his place. It was challenged by Dr.J.Sampath before this Court in W.P.No.8847 of 2016. The same allegations are made in the present complaint. But, this Court by an order dated 15.03.2016 dismissed the said writ petition and no appeal was filed. Therefore, the registration of the case on the same allegation is illegal and liable to be quashed.

2.1.He further submitted that the said Dr.J.Sampath was relieved from his Additional Charge as Registrar incharge on the forenoon of 26.02.2016 and Dr.M.Ramachandran was appointed as Registrar incharge. The said Dr.J.Sampath was not even a Registrar incharge on 27.02.2016 when he had illegally removed the Vice Chancellor incharge, i.e., the Subordinate has removed a Superior Officer. Therefore, all the orders passed by Dr.J.Sampath between 27.02.2016 and 04.03.2016 were declared as null and void. The said order was challenged in W.P.No.9027 of 2016 and this Court had dismissed the said writ petition, and no appeal was preferred.

2.2.Further, he submitted that there is no legal provision under any rules of the University for the Registrar to relieve the Vice Chancellor, whether incharge or regular. The Power to

appoint and remove Vice Chancellor is vested with the President of India, in his capacity as Visitor of the University. Without considering the said facts the first respondent registered the case and it is arbitrary and violative of Article 14 of the Constitution of India.

2.3.Further, he submitted that the second respondent is not an aggrieved party related to the allegations made against two orders dated 26.02.2016 and 27.02.2016. He has filed the present complaint only with a vested interest to settle his personal scores that too after one year delay. Therefore, he sought for quashment of the F.I.R.

3.Per contra, the learned counsel for the second respondent would submit that the case has been registered in Crime No.105 of 2017, in which the petitioners were arrayed as A1 to A4. He submitted that the occurrence took place between 26.02.2016 and 27.02.2016, the then Registrar, in the first and second week of March 2016 filed the Writ Petition in W.P.No.8847 of 2016, challenging the note dated 26.02.2016 issued by the Pondicherry University represented by its Vice Chancellor.

3.1.He further contended that he was functioning as Deputy Registrar from 21.09.2015 thereafter, transferred to recruitment cell on 11.03.2016. He repeatedly sent so many representations to initiate appropriate legal action against the petitioner for legal action. The second respondent also sent a detailed representation to the lieutenant Governor of Pondicherry, requesting to initiate appropriate action against the petitioners.

3.2.Thereafter, he also retired from service on 30.09.2016, and he filed a direction petition before this Court in CrI.O.P.No.14878 of 2017 and on the direction issued by this Court by an order dated 30.08.2017, the first respondent registered the case in Crime No.105 of 2017. There is specific averments to constitute a cognizable offences against the petitioners. Therefore, it cannot be quashed on it's threshold and he prayed for dismissal of the quash petition.

3.3.The learned Additional Public Prosecutor filed counter and submitted that the petitioners are arrayed as A1 to A4 and the case has been registered in Crime No.105 of 2017 for the offence under Sections 120(B), 201, 381, 420, 468, 471 of IPC r/w 34 of IPC. On the direction issued by this Court in CrI.O.P.No.14878 of 2017, the first respondent conducted a detailed enquiry and registered the case against the petitioners. The allegations against the petitioners are that the first petitioner who was incharge Vice Chancellor and second petitioner was Registrar incharge of Pondicherry University

colluded and committed an offence of hatching of conspiracy, theft, fabrication of false documents, forgery, cheating and criminal breach of trust. The Ministry of Human Resources Department had directed relieving of the first petitioner as Vice Chancellor and the Registrar incharge Dr.J.Sampath who was functioning as Registrar on 27.02.2016 relieved the Vice Chancellor from the post and the Senior most Dean Dr.Prabhakara Raya had taken charge. However, after he was relieved from the post, the first petitioner colluded with the second petitioner and others and created false documents as if on 26.02.2016 itself, the said Dr.J.Sampath was relieved as Registrar incharge. Thereby, the petitioners have committed the offence and it is under investigation. He further submitted that F.I.R cannot be quashed and the investigation shall be made to go on. Therefore, he sought for dismissal of the quash petition.

4.Heard, Mr.N.R.Elango, the learned Senior counsel appearing for the petitioners and Mr.V.Balamurugane, the learned Additional Public Prosecutor appearing for the first respondent and Mr.M.Velumurugan, the learned counsel appearing for the second respondent and Mr.Stalin Abhimanyu, the learned counsel appearing for the third respondent.

5.The petitioners are the accused no.1 to 4 in Crime No.105 of 2017 registered for the offence under Sections 120(B), 201, 381, 420, 468, 471 of IPC r/w 34 of IPC on the file of the first respondent. It seems that the second respondent filed a direction petition before this Court in CrI.O.P.No.14878 of 2017 and this Court passed an order dated 30.08.2017. Based on the direction the first respondent conducted preliminary enquiry and being satisfied that there exists prima - facie case and registered the case against the petitioners. The crux of the complaint is that the first petitioner who was incharge of Vice Chancellor and the second petitioner who was incharge of Registrar of Pondicherry University colluded along with the other accused persons and committed an offence of hatching of conspiracy, theft, fabrication of false documents, forgery, cheating and criminal breach of trust. There are serious allegations as against the petitioners and there is a prima - facie case made out to register the case against the petitioners.

6.It is relevant to rely the Judgment of the Hon'ble Supreme Court of India in CrI.O.P.No.255 of 2019 Sau. Kamal Shivaji Pokarnekar -vs- The State of Maharashtra and others which is extracted hereunder:

"4.The only point that arises for our consideration in this case whether the High Court was right in setting aside the order by

which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his Judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima - facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5.Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6.Defences that may be available, or facts / aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.

9.Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima - facie, offences that

are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prime - facie made out in the complaint, the criminal proceeding shall not be interdicted."

The Hon'ble Supreme Court of India held that quashing Criminal proceedings is call for only in a case where the complaint does not disclose any offence. A perusal of the complaint discloses that prima - facie offences are alleged against the petitioners. The correctness or otherwise of the said allegations have to be decided only in the investigation. Further, at the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused and it cannot be quashed on its threshold. It has to be investigated to unearth the crime committed by the petitioners.

7. Therefore, in view of the above discussions, this Court is not inclined to quash the complaint. Accordingly, the Criminal Original Petition is dismissed. Considering the above facts and circumstances the first respondent is directed to complete the investigation and file a final report in Crime No.105 of 2017 within a period of three months from the date of receipt of a copy of this Order. Consequently, the connected Criminal Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rna

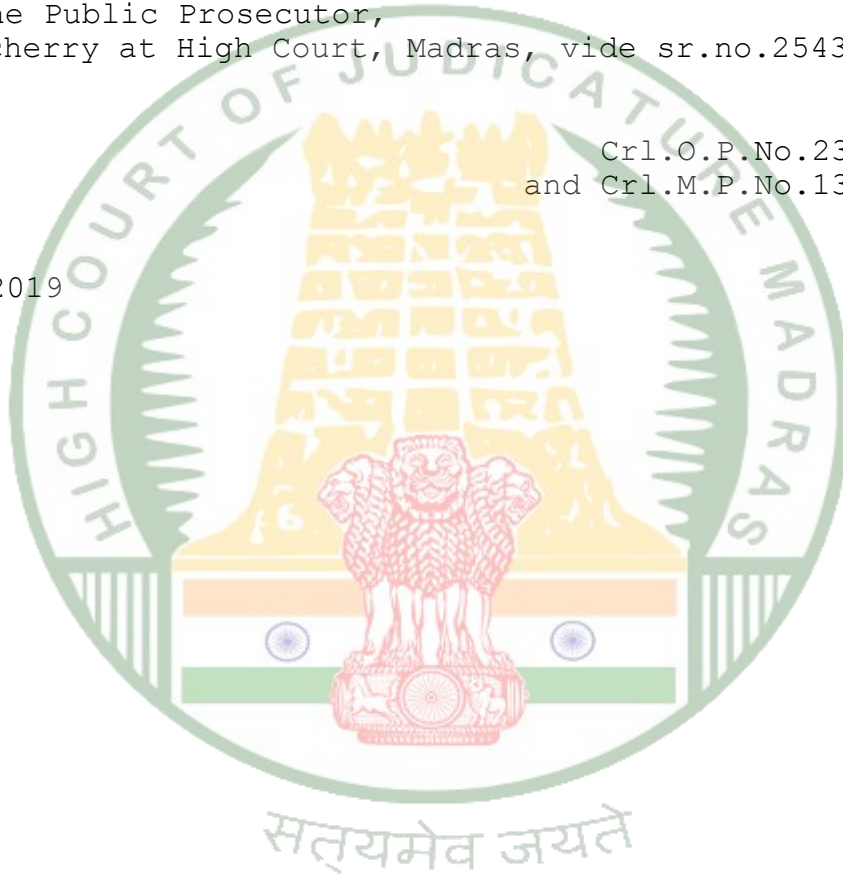
To

1. The Station House Officer,
Kalapet Police Station,
Puducherry.
2. The Pondicherry University,
rep. By its Registrar, Kalapet,
Puducherry.

+2cc to M/s.M.Govindaraju, Advocate, S.R.No.24170
+1cc to Mr.M.Velumurugan, Advocate, S.R.No.24341
+1cc to The Public Prosecutor,
Puducherry at High Court, Madras, vide sr.no.25431

CrI.O.P.No.23112 of 2017
and CrI.M.P.No.13453 of 2017

SSV(CO)
CS/29/04/2019



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